



ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

1 COMMISSIONERS
2 MARC SPITZER, CHAIRMAN
3 WILLIAM A. MUNDELL
4 JEFF HATCH-MILLER
5 MIKE GLEASON
6 KRISTIN K. MAYES

W-02859A-04-0844

7 IN THE MATTER OF DIVERSIFIED
8 WATER UTILITIES, INC. TO EXPAND
9 ITS CERTIFICATE OF CONVENIENCE
10 AND NECESSITY TO INCLUDE ALL OF
11 SECTIONS 13, 14, 15, 23 AND THAT
12 PORTION OF SECTION 16 EAST OF
13 RAILROAD TRACKS ALL IN T2S, R8E,
14 PINAL COUNTY, ARIZONA

15 IN THE MATTER OF THE APPLICATION
16 OF H₂O, INC., FOR AN EXTENSION OF
17 ITS EXISTING CERTIFICATE OF
18 CONVENIENCE AND NECESSITY.

19 IN THE MATTER OF THE APPLICATION
20 OF JOHNSON UTILITIES, L.L.C. DBA
21 JOHNSON UTILITIES COMPANY FOR
22 AN EXTENSION OF ITS CERTIFICATE
23 OF CONVENIENCE AND NECESSITY TO
24 PROVIDE WATER AND WASTEWATER
25 SERVICE TO THE PUBLIC IN THE
26 DESCRIBED AREA IN PINAL COUNTY,
ARIZONA.

DOCKET NO. W-02859A-04-

APPLICATION TO EXPAND ITS
CERTIFICATE EITHER BY
AMENDING DECISION NO.
63960 (as Amended), OR,
ALTERNATIVELY, AS A NEW
APPLICATION

Arizona Corporation Commission
DOCKETED

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1 IN THE MATTER OF THE APPLICATION
2 OF JOHNSON UTILITIES, L.L.C. DBA
3 JOHNSON UTILITIES COMPANY FOR
4 AN EXTENSION OF ITS CERTIFICATE
5 OF CONVENIENCE AND NECESSITY
6 TO PROVIDE WATER AND
7 WASTEWATER SERVICE TO THE
8 PUBLIC IN THE DESCRIBED AREA IN
9 PINAL COUNTY, ARIZONA.

10 IN THE MATTER OF THE APPLICATION
11 OF DIVERSIFIED WATER UTILITIES,
12 INC. TO EXTEND ITS CERTIFICATE OF
13 CONVENIENCE AND NECESSITY.

14 IN THE MATTER OF THE APPLICATION
15 OF QUEEN CREEK WATER COMPANY
16 TO EXTEND ITS CERTIFICATE OF
17 CONVENIENCE AND NECESSITY.

18 Diversified Water Utilities, Inc. ("Diversified") applies to expand its
19 Certificate of Convenience and Necessity ("CC&N") to include all of Sections 13, 14, 15,
20 23 and that portion of Section 16 east of the railroad tracks all being located in Township 2
21 South, Range 8 East, Pinal County, Arizona (the "Expanded Area") either as an
22 amendment of Decision No. 63690, dated September 4, 2001 (as amended by Decision No.
23 64062, dated October 4, 2001 and Decision No. 65840, April 22, 2003), pursuant to A.R.S.
24 § 40-254.01, or, alternatively as a new application, pursuant to A.R.S. § 40-282. This
25 Application is supported by the following:
26

1. Diversified is an Arizona corporation, in good standing as reflected by the Certificate of Good Standing attached as **Exhibit A**. Diversified is authorized by the Arizona Corporation Commission (the "Commission") to provide domestic water service in nine sections of Pinal County, Arizona and presently serves approximately 352 service connections.

2. Diversified is a fit and proper entity to provide domestic water service to the Expanded Area. The Commissions Utilities Division Staff, by its Report issued January 2001 and by affirmative evidence provided in support thereof, has previously recommended that Diversified's CC&N be expanded to include the Expanded Area (referred to as Parcel 2 in the Staff Report). Pages 20 and 21 of the Staff Report are attached hereto as **Exhibit B**.

3. Administrative Law Judge Stern, after considering the evidence, concurred with Staff and recommended that Diversified's CC&N be expanded to include the Expanded Area. Pages 27 through 34 of the Opinion and Order by Judge Stern dated August 15, 2001 are attached hereto as **Exhibit C**.

4. At open meeting ("Open Meeting") in 2001 before the Commission, the Recommended Decision was amended by the Commission and award of the Expanded Area was left open and uncertificated "because of uncertainty with respect to the Skyline District and potential litigation in state court." See, Decision No. 64062, at page 33, a copy of which is attached hereto as **Exhibit D**. Based upon statements made at Open Meeting, it is Diversified's understanding that the amendment was proffered due to three factors: a) the existence of the Skyline

Domestic Water Improvement District ("Skyline"), formed by the Board of Supervisors of Pinal County, Arizona (the "Board"); b) the Board's vigorous opposition to the expansion of Diversified's CC&N and c) the land owners inability to show a true need for service at that time.

5. Diversified filed an action in Superior Court challenging Skyline's formation and all actions taken in furtherance thereof. See, *Diversified Water Utilities, Inc. v. Pinal County, et al*, Maricopa Superior Court Case No. CV2002-003724.

6. The Board, in furtherance of a Settlement Agreement with Diversified, subsequently adopted Resolution number 033104-DWU (a copy of which is attached as **Exhibit E**) rescinding the resolution that formed Skyline and declaring all actions taken on behalf of or in furtherance of Skyline to be void *ab initio*. Skyline has been dissolved and no longer exists.

7. Having now become very familiar with Diversified and its operations through 4 years of contested proceedings, the Board also expressly recognized Diversified's ability to provide reliable water service to its customers and its readiness, willingness and ability to provide reliable domestic water service to the Expansion Area. By Resolution No. 033104-DWU, the Board took additional steps to affirmatively find, conclude and resolve that it supports the expansion of Diversified's CC&N to include the Expansion Area and requested its Staff file letters and testimony in support thereof and to withdraw the testimony previously submitted supporting Johnson Utilities, L.L.C.

1 8. The Expansion Area is part of the master planned development
2 known as Bella Vista Farms. Two of the sections of land included within the Bella
3 Vista Farms Development are already located within Diversified's Certificate of
4 Convenience and Necessity. The Expansion Area encompasses that portion of the
5 Bella Vista Farms Development that is presently contiguous to, but outside
6 Diversified's existing CC&N.

7 9. Centex Homes is actively planning developments within that
8 portion of Bella Vista Farms Development located in sections 13 and 23, T3S, R8E,
9 G&SRB&M, Pinal County Tax Parcels, 210-13-001A and 210-23-001A. The Centex
10 development is projected to have approximately 4,368 lots within its mixed use
11 development. Centex has informed Diversified that construction is expected to
12 commence in 2005. Diversified is ready, willing and able to serve the Centex Homes
13 projects within the Expanded Area.
14

15 10. Expanding Diversified's certificated area to include the Expanded
16 Area will enhance Diversified's ability to continue to provide reliable water service to
17 both its existing and future customers.
18

19 11. Rather than starting anew, Diversified respectfully requests that
20 the Commission exercise its authority under A.R.S. § 40-254.01 and amend Decision
21 No. 63690, as amended, by granting the Expanded Area to Diversified as originally
22 recommended by Staff and the Administrative Law Judge. Amendment is appropriate
23 because (i) the proper water service provider for the Expanded Area has already been
24 addressed by ACC staff and an extensive ACC Administrative Hearing both of which
25
26

determined that Diversified is the appropriate water provider, (ii) the underlying factors leaving the Expanded Area open and uncertificated pending resolution of unresolved matters between Diversified and Pinal County have all been addressed (i.e., Skyline no longer exists, the Board no longer opposes certification to Diversified and supports certification of the Expanded area to Diversified; and there is an immediate need for water service), (iii) the amendment to Decision No. 63690 will avoid delay and expedite providing water services to the active developments of Centex Homes within the Expanded Area, (iv) the amendment to Decision No. 63690 will avoid the duplication of unnecessary costs and expenses already incurred by Diversified for the CC&N Hearing and the expenses and costs to defend against the interference in this matter by Johnson Utilities, L.L.C. and (v) the amendment to Decision No. 63690 will bring to conclusion and remove the motivation for Johnson Utilities, L.L.C. to interfere with and disrupt the operations of Diversified to prevent the certification to Diversified of the Expanded Area and to obtain the Expanded Area for Johnson Utilities, L.L.C. See e.g., Temporary Order attached as **Exhibit F**.

12. Alternatively, Diversified requests this Application be treated as a new application for an extension of its certificated area and that the Commission enter a decision expanding Diversified's Certificate of Convenience and Necessity to include the Expanded Area.

13. The public convenience and necessity require the granting of this Application. There is a need for water service to the Expanded Area. Diversified is an existing public service corporation serving the area contiguous to the Expanded Area.

1 Expansion of Diversified's certificate of convenience and necessity will promote
2 orderly growth of existing utilities in the area and the achievement of economies of
3 scale related therewith.

4 14. To the best of its knowledge and belief, Diversified is currently in
5 compliance with all regulatory requirements applicable to the provision of domestic
6 water service within its certificated area.

7 15. All correspondence and communications regarding this
8 application should be addressed to:

9 William P. Sullivan
10 Michael A. Curtis
11 David M. Lujan
12 Martinez & Curtis, P.C.
13 2712 N. 7th Street
14 Phoenix, Arizona 85006
15 Phone (602) 248-0372
16 Facsimile (602) 266-8290
wsullivan@martinezcurtis.com
mcurtis401@aol.com
dlujan@martinezcurtis.com

17 WHEREFORE, it is respectfully requested that the Commission:

- 18 1. After giving notice to any affected parties, enter a decision
19 amending Decision No. 63690, as amended, to grant Diversified
20 Water Utilities a certificate of convenience and necessity to serve
21 the Expanded Area; or
22
23 2. Alternatively, treat this matter as a new application and, after
24 proper notice and hearing, enter an order extending Diversified's
25
26

1 certificate of convenience and necessity to encompass the
2 Expanded Area.

- 3 3. Enter such procedural orders as necessary and appropriate to
4 process this matter; and
5 4. Enter such further orders as the Commission deems just and
6 appropriate under the circumstances.

7 RESPECTFULLY SUBMITTED this 24th day of November, 2004.

8 MARTINEZ & CURTIS, P.C.

9
10
11 By: 

12 William P. Sullivan, Esq.
13 2712 North Seventh Street
14 Phoenix, Arizona 85006-1090
15 Attorneys for Diversified Water
16 Utilities, Inc.
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26

PROOF OF AND CERTIFICATE OF MAILING

I hereby certify that on this 24th day of November, 2004, I caused the foregoing document to be served on the Arizona Corporation Commission by delivering the original and twenty-three (23) copies of the above to:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

With copies of the foregoing mailed and/or hand-delivered this 24th day of November, 2004 to:

Marc Stern, Administrative Law Judge
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Christopher Kempley, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ernest Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Jay Shapiro
Karen E. Errant
FENNEMORE CRAIG, P.C.
3003 N. Central, Suite 2600
Phoenix, Arizona 85012
Attorneys for H₂O Water Company and
Johnson Utilities, L.L.C.

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3003 N. Central, Suite 1250

Phoenix, AZ 85012

Attorneys for Arizona Utility Supply & Service, L.L.C.

Petra Schadeberg

PANTANO DEVELOPMENT LTD. PARTNERSHIP

3408 N. 60th Street

Phoenix, Arizona 85018

Richard N. Morrison

SALMON, LEWIS & WELDON

4444 N. 32nd Street, Suite 200

Phoenix, Arizona 85018

Kathy Aleman, Manager

WOLFCOR, L.L.C. & WOLFKIN FARMS

Southwest Properties, Inc. 3850 e. baseline Road, suite 123

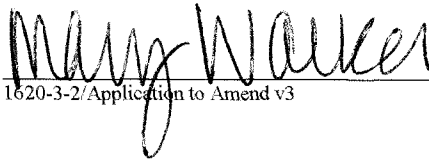
Mesa, Arizona 85026

Dick Maes, Project Manager

VISTOSO PARTNERS, L.L.C.

1121 W. Warner Road, Suite 109

Tempe, Arizona 85284



1620-3-2/Application to Amend v3

EXHIBIT A

STATE OF ARIZONA



Office of the CORPORATION COMMISSION

CERTIFICATE OF GOOD STANDING

To all to whom these presents shall come, greeting:

I, Brian C. McNeil, Executive Secretary of the Arizona Corporation Commission, do hereby certify that

*****DIVERSIFIED WATER UTILITIES, INC.*****

a domestic corporation organized under the laws of the State of Arizona, did incorporate on February 8, 1995.

I further certify that according to the records of the Arizona Corporation Commission, as of the date set forth hereunder, the said corporation is not administratively dissolved for failure to comply with the provisions of the Arizona Business Corporation Act; that its most recent Annual Report, subject to the provisions of A.R.S. sections 10-122, 10-123, 10-125 & 10-1622, has been delivered to the Arizona Corporation Commission for filing; and that the said corporation has not filed Articles of Dissolution as of the date of this certificate.

This certificate relates only to the legal existence of the above named entity as of the date issued. This certificate is not to be construed as an endorsement, recommendation, or notice of approval of the entity's condition or business activities and practices.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission. Done at Phoenix, the Capital, this 7th Day of October, 2004, A. D.



Executive Secretary

By Kayla Flake

EXHIBIT B

Staff further recommends that Johnson Utilities, Inc. be ordered to charge its existing rates and charges in the approved extension areas.

Diversified Water Utilities

Staff recommends that the water CC&N of Diversified Water Utilities, Inc. be conditionally extended to include Parcels 2 and 24.

Staff further recommends that Diversified Water Utilities file in this docket, within two (2) years from the effective date of this Decision, documentation that indicates that developers have joined the Central Arizona Groundwater Replenishment District.

Staff further recommends that Diversified Water Utilities file in this docket, within two (2) years from the effective date of this Decision, copies of its Approval to Construct.

Staff further recommends Diversified Water Utilities file in this docket, within two (2) years from the effective date of this Decision, a copy of its franchise from Pinal County for the extension areas.

Staff further recommends that within two years from the effective date of this Decision, Diversified Water Utilities file a CC&N review with the Commission containing the following information: a) number of customers being served in the extension areas, b) amount of plant facilities installed to serve extension areas, c) number of gallons sold in the extension areas, d) amount of revenue generated by the extension areas, e) master plan of extension areas showing all plant installed and customer locations and f) any other information Staff deems relevant. At the time of the CC&N review, Staff should have the discretion to perform a physical plant inspection. Should the Staff inspection indicate that no development has commenced at the two year review period or if the information as listed above has not been timely supplied, the conditional CC&N extension granted in this proceeding should become null and void without further order of the Commission, and future CC&N extensions into the areas deemed null and void would require a new CC&N extension filing. Staff should have 120 days from the two-year anniversary date of the Decision to file a report containing one of the following three recommendations:

1. Final approval of the CC&N for all areas requested in this proceeding;
2. Final approval of the CC&N for portions of areas requested in this proceeding with the cancellation of the remainder areas; or
3. Disapproval of the CC&N extension for all areas requested in this proceeding.

Staff further recommends that Diversified Water Utilities file in this docket to the Commission for the next two years, documentation from ADEQ indicating that it has been in full compliance with ADEQ for each year. This documentation must be submitted within 30 days of the anniversary date of this Decision each year.

Staff further recommends that the Commission's Decision covering the extension be considered null and void without further order from the Commission should Diversified Water Utilities fail to meet the above conditions within the time specified.

Staff further recommends that Diversified Water Utilities be ordered to charge its existing rates and charges in the approved extension areas.

Queen Creek Water Company

Staff recommends that Queen Creek Water Company's request to provide water service to Parcels 15, 16, 17, 18, 22 and part of Parcel 11 be denied.

EXHIBIT C

1 applicants and their continuing to charge their existing rates and charges in their respective extension
2 areas in the respective parcels as further delineated in Exhibit A. Staff also recommended the denial
3 of applications for certain parcels.

4 149. However, due to the ongoing nature of these proceedings, Staff amended a number of
5 its recommendations and, in a post-hearing filing on March 27, 2001, memorialized the amendments
6 which it made during the actual hearing.

7 150. Staff's witness, Mr. Mark DiNunzio, emphasized that he is not convinced that
8 development will take place in a timely manner as previously stated because he believes that there
9 has been a good deal of speculation presented by developers who would be able to capitalize on the
10 increased value of their property if it is included in a utility's Certificate. Therefore, Mr. DiNunzio
11 recommends that any Certificate from this proceeding be granted conditionally and subject to a
12 review after two years to determine the extent of development. As part of the two-year review, Staff
13 would have an additional period of time to review the development, or lack thereof, and file a report
14 either recommending final approval of the Certificate as requested, final approval of the Certificate
15 for the portions of the areas requested where development has taken place with a cancellation of the
16 remaining areas, and/or disapproval of the Certificate for all areas requested if no development has
17 taken place.

18 151. Staff indicates that since 1998, JUC has had 15 complaints, H₂O has had ten
19 complaints, Diversified has had no complaints and Queen Creek has had four complaints.

20 152. With respect to compliance issues, Staff found that JUC, H₂O, Diversified and Queen
21 Creek are current on their property taxes and filings with the Commission and are presently in
22 compliance with the rules of ADEQ with the exception of securing various approvals and permits to
23 construct and/or the filing of franchises for the requested parcels herein.

24 JUC

25 153. With respect to JUC's application for the extension of its water and wastewater
26 Certificate, Staff is recommending the following:

- 27 • that JUC's wastewater Certificate be conditionally extended to include parcels
28 2, 14, 15, 16, 17, 18, 19, 20, and 22;

- that JUC's water and wastewater Certificates be conditionally extended to include parcels 3, 4, 5, 6, 7, 8, 9, 11, 12, 21 and 23;
- that JUC's application for parcel 1 be denied;
- that JUC's application with respect to its request to provide service for parcels 10 and 13 be withdrawn as requested by JUC;
- that JUC file a copy for a request for service to parcel 8 within 90 days of the effective date of this Decision;
- that JUC file with the Commission in this Docket, within two years of the effective date of this Decision, a copy of its franchise from Pinal County for the extension of its Certificate for the areas authorized herein;
- that JUC file with the Commission in this Docket, within two years of the effective date of this Decision, copies of all Certificates of Approval to Construct ("CAC") and Certificates of Approval of Construction for development in each of the respective approved parcels as authorized hereinafter;
- that JUC file, within two years of the effective date of this Decision, a request for Certificate review after which, Staff, at its discretion, shall perform a physical plant inspection to determine the extent to which development has commenced.⁸

After submission of JUC's request for review, Staff shall have 120 days to file a report containing one of the following three recommendations:

- ♦ final approval of the Certificate for all parcels approved in this proceeding;
- ♦ final approval of the Certificate for portions of the parcels approved in this proceeding with the cancellation of the undeveloped portions of the parcels; or
- ♦ disapproval of the Certificate for the parcel approved in this proceeding.

⁸ The Certificate review should include the following data: number of customers in the extended area, amount of plant installed to serve the extended area, number of gallons sold in the extended area, the amount of revenue generated in the extended area, the Master Plan for the parcels showing all plant installed and customer location, and any other information Staff deems relevant.

1 154. Staff further recommends that JUC file, within 30 days of the anniversary date of this
2 Decision each year for the next two years, documentation from ADEQ indicating that JUC has been
3 in compliance with ADEQ for each year, and that failure to submit this documentation in the Docket
4 or failure to correct any major or minor violation within 30 days from the date of notice of violation
5 should result in the Certificate authorized hereinafter becoming null and void without further order of
6 the Commission.

7 155. Staff further recommends that JUC file, within 30 days from the effective date of this
8 Decision, an amended waste water tariff schedule which includes language for its wastewater rates
9 and charges to state that said charges shall not become effective until wastewater first flows into the
10 collection system.

11 156. Staff further recommends that, if JUC fails to meet any of the aforementioned
12 conditions within the time specified, the Certificate authorized hereinafter for the respective parcel be
13 considered null and void without further order by the Commission.

14 H₂O

15 157. With respect H₂O's application for the extension of its Certificate to provide public
16 water service, Staff is recommending the conditional approval of the application to extend service to
17 that portion of parcel 14 not previously certificated and parcels 15, 16, 17, 18, 22 and Section 13,
18 Township 2 South, Range 7 East in Maricopa County, Arizona.

19 158. Staff further recommends that H₂O file, within two years of the effective date of this
20 Decision, a copy of the developers' Certificates of Assured Water Supply ("CAWS") to be issued by
21 the Arizona Department of Water Resources ("ADWR") for the respective parcels and sections.

22 159. Staff further recommends that H₂O file, within two years of the effective date of this
23 Decision, a copy of its CAC to be issued by the ADWR for the main extension for the Combs School.

24 160. Staff also recommends that H₂O file, within two years from the effective date of this
25 Decision, a copy of its franchise from Pinal County for the extension areas represented by the
26 aforementioned parcels and Section 13.

27 161. Staff is also recommending the following:
28

- 1 • that H₂O file with the Commission in this Docket within two years of the effective
2 date of this Decision, a copy of its franchise from Pinal County for the extension of its
3 Certificate for the areas authorized hereinafter;
- 4 • that H₂O file with the Commission in this Docket, within two years of the effective
5 date of this Decision, copies of all Certificates of Approval to Construct ("CAC") and
6 Certificates of Approval of Construction for development in each of the respective
7 approved parcels as authorized hereinafter;
- 8 • that H₂O file, within two years of the effective date of this Decision, a request for
9 Certificate review after which, Staff, at its discretion, shall perform a physical plant
10 inspection to determine the extent to which development has commenced.⁹

11 After submission of H₂O's request for review, Staff shall have 120 days to file a report
12 containing one of the following three recommendations:

- 13 ♦ final approval of the Certificate for all parcels approved in this proceeding;
- 14 ♦ final approval of the Certificate for portions of the parcels approved in this proceeding
15 with the cancellation of the undeveloped portions of the parcels; or
- 16 ♦ disapproval of the Certificate for the parcel approved in this proceeding.

17 162. Staff further recommends that H₂O file, within 30 days of the anniversary date of this
18 Decision each year for the next two years, documentation from ADEQ indicating that H₂O has been
19 in compliance with ADEQ for each year, and that failure to submit this documentation in the Docket
20 or failure to correct any major or minor violation within 30 days from the date of notice of violation
21 should result in the Certificate authorized hereinafter becoming null and void without further order of
22 the Commission.

23 163. Staff further recommends that, if H₂O fails to meet any of the aforementioned
24 conditions within the time specified, the Certificate authorized hereinafter for the respective parcel be
25 considered null and void without further order by the Commission.

26
27 ⁹ The Certificate review should include the following data: number of customers in the extended area, amount of
28 plant installed to serve the extended area, number of gallons sold in the extended area, the amount of revenue generated in
the extended area, the Master Plan for the parcels showing all plant installed and customer location, and any other
information Staff deems relevant.

1 DIVERSIFIED

2 164. With respect to Diversified's application for an extension of its Certificate, Staff is
 3 recommending that the Commission approve the extension of its Certificate to include parcels 2 and
 4 24.

5 165. Staff is further recommending that Diversified file, within two years of the effective
 6 date of this Decision, the following: the developers' CAWS to be issued by ADWR; copies of its
 7 CAC's to be issued by ADEQ; and a copy of its franchise for parcels 2 and 24 which are to be issued
 8 by the Pinal County Board.

9 166. Staff is also recommending the following:

- 11 • that Diversified file with the Commission in this Docket, within two years of the
 12 effective date of this Decision, copies of all Certificates of Approval to Construct
 13 ("CAC") and Certificates of Approval of Construction for development in each of the
 14 respective approved parcels as authorized hereinafter;
- 15 • that Diversified file, within two years of the effective date of this Decision, a request
 16 for Certificate review after which, Staff, at its discretion, shall perform a physical
 17 plant inspection to determine the extent to which development has commenced.¹⁰

18 After submission of Diversified's request for review, Staff file a report containing one of the
 19 following three recommendations:

- 20 ♦ final approval of the Certificate for all parcels approved in this proceeding;
- 21 ♦ final approval of the Certificate for portions of the parcels approved in this proceeding
 22 with the cancellation of the undeveloped portions of the parcels; or
- 23 ♦ disapproval of the Certificate for the parcel approved in this proceeding.

24 167. Staff further recommends that Diversified file, within 30 days of the anniversary date
 25 of this Decision each year for the next two years, documentation from ADEQ indicating that
 26 Diversified has been in compliance with ADEQ for each year and that failure to submit this

27 ¹⁰ The Certificate review should include the following data: number of customers in the extended area, amount of
 28 plant installed to serve the extended area, number of gallons sold in the extended area, the amount of revenue generated in
 the extended area, the Master Plan for the parcels showing all plant installed and customer location, and any other
 information Staff deems relevant.

1 documentation in the Docket or failure to correct any major or minor violation within 30 days from
2 the date of notice of violation should result in the Certificate authorized hereinafter becoming null
3 and void without further order of the Commission.

4 168. Staff further recommends that, if Diversified fails to meet any of the aforementioned
5 conditions within the time specified, the Certificate authorized hereinafter for the respective parcel be
6 considered null and void without further order by the Commission.

7 QUEEN CREEK

8 169. With respect to Queen Creek's application for an extension of its Certificate, Staff is
9 recommending the approval of Queen Creek's request for the extension of its Certificate to provide
10 water service to the eastern three-quarters of Section 14, Township 2 South, Range 17 East for which
11 it is not yet certificated subject only to the condition that Queen Creek files, within 365 days of the
12 effective date of this Decision, a copy of its Maricopa County franchise issued by the Maricopa
13 County Board of Supervisors or the approval granted hereinafter will be rendered null and void. Staff
14 is also recommending that the Country Thunder parcel, located in Section 30, Township 2 South,
15 Range 3 East, Pinal County, Arizona, be deleted from H₂O's Certificate and transferred to Queen
16 Creek's Certificate.

17 170. After reviewing the evidence in its entirety, we commend Staff at the end of this long
18 and complex proceeding and find the majority of their recommendations are reasonable in light of the
19 speculative nature of the purported development which is to take place in large undeveloped areas in
20 Pinal County, Arizona. Based on this speculation, we believe that Staff has made well-reasoned
21 unbiased recommendations with respect to recommending the issuance of conditional Certificates
22 which will be subject to further Commission review in the future.

23 171. For the present, we will adopt Staff's recommendations with respect to the approvals
24 granted hereinafter for the respective parcels as are described in Exhibits A and B attached hereto.
25 However, with respect to Staff's recommendation that an affected utility (JCU, H₂O, Queen Creek,
26 and Diversified) shall cure any minor or major violation of a requirement of ADEQ within 30 days
27 from the date of notice of violation, thus resulting in the nullification of an extension of that utility's
28 Certificate, we find Staff's recommendation to be too extreme and will allow the violating utility a

1 period of 90 days from the date of notice of the violation to either cure the violation or to request an
2 extension of time in which to resolve the problem with ADEQ. We shall also require JUC, H₂O,
3 Diversified and Queen Creek to file the correct legal descriptions for the respective parcels within 30
4 days of the effective date of this Decision.

5 CONCLUSIONS OF LAW

6 1. Applicants, JUC, H₂O, Diversified and Queen Creek are public service corporations
7 within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-252, 40-281 and 40-
8 282.

9 2. The Commission has jurisdiction over JUC, H₂O, Diversified and Queen Creek and of
10 the subject matter of the applications as amended.

11 3. Notice of the applications as amended and described herein was given in the manner
12 prescribed by law.

13 4. The public convenience and necessity require the public would benefit by the
14 amendment of the Certificates of JUC, H₂O, Diversified and Queen Creek so that their certificated
15 service areas include the parcels and sections more fully described in Exhibits A and B.

16 5. JUC, H₂O, Diversified and Queen Creek are fit and proper entities to receive amended
17 Certificates which encompass the areas more fully described in Exhibits A and B.

18 6. Staff's recommendations with respect to the applications of JUC, H₂O, Diversified and
19 Queen Creek, as set forth in Findings of Fact Nos. 153, 154, 155, 156, 157, 158, 159, 160, 161, 162,
20 163, 164, 165, 166, 167, 168, 169, and 171 for the amendment of their respective Certificates, should
21 be approved subject to the recommendations of Staff with the exception that a utility cited for either a
22 minor or major violation by ADEQ within the two year period of review following the effective date
23 of this Decision should have 90 days from the date of the notice of violation to cure the defect or
24 request an extension from the Commission in order to remedy the violation.

25 ORDER

26 IT IS THEREFORE ORDERED that the applications of Johnson Utilities, L.L.C., dba
27 Johnson Utilities Company, H₂O, Inc., Diversified Water Utilities, Inc., and Queen Creek Water
28 Company for amendment of their Certificates of Convenience and Necessity for the operation of the

1 applicable water and/or waste water facilities in the areas more fully described in the parcels as set
 2 forth in Exhibits A and B attached hereto be, and are hereby, conditionally approved subject to the
 3 respective utilities meeting the applicable conditions as set forth in Findings of Fact Nos. 153, 154,
 4 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, and 171 and Conclusions
 5 of Law Nos. 4, 5 and 6 above.

6 IT IS FURTHER ORDERED that in the event Johnson Utilities, L.L.C. dba Johnson Utilities
 7 Company, H₂O, Inc., Diversified Water Utilities, Inc. and Queen Creek Water Company do not
 8 timely meet the requirements according to Staff's recommendations as set forth in Findings of Fact
 9 Nos. 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, and 171, or
 10 fail to cure any major or minor violations cited by ADEQ within 90 days from the date of notice or
 11 request an extension therefrom, then such conditional Certificate granted herein for the respective
 12 parcel shall be rendered null and void without further order of the Commission.

13 IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company,
 14 H₂O, Inc., Diversified Water Utilities, Inc. and Queen Creek Water Company shall file, if not
 15 previously filed, correct legal descriptions for the parcels and/or sections amending their Certificates
 16 of Convenience and Necessity as described herein.

17 IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company,
 18 H₂O, Inc., Diversified Water Utilities, Inc. and Queen Creek Water Company shall charge those
 19 customers in the areas more fully described in Exhibits A and B their existing rates and charges until
 20 further Order of the Commission:

21 ...

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EXHIBIT D

1 170. After reviewing the evidence in its entirety, we commend Staff at the end of this long
2 and complex proceeding and find the majority of their recommendations are reasonable in light of the
3 speculative nature of the purported development which is to take place in large undeveloped areas in
4 Pinal County, Arizona. Based on this speculation, we believe that Staff has made well-reasoned
5 unbiased recommendations with respect to recommending the issuance of conditional Certificates
6 which will be subject to further Commission review in the future.

7 171. For the present, we will adopt Staff's recommendations with the exception of Parcel 2
8 with respect to the approvals granted hereinafter for the respective parcels, except that we find Parcel
9 1 should be certificated to JUC, as are described in Exhibits A and B attached hereto. With respect to
10 Parcel 2, because of uncertainty with respect to the Skyline District and potential litigation in state
11 court, we shall deny all water applications for this parcel at this time, but shall approve JUC's
12 application to provide wastewater service. However, with respect to Staff's recommendation that an
13 affected utility (JUC, H₂O, Queen Creek, and Diversified) shall cure any minor or major violation of
14 a requirement of ADEQ within 30 days from the date of notice of violation, thus resulting in the
15 nullification of an extension of that utility's Certificate, we find Staff's recommendation to be too
16 extreme and will allow the violating utility a period of 90 days from the date of notice of the violation
17 to either cure the violation or to request an extension of time in which to resolve the problem with
18 ADEQ. We shall also require JUC, H₂O, Diversified and Queen Creek to file the correct legal
19 descriptions for the respective parcels within 30 days of the effective date of this Decision.

20 CONCLUSIONS OF LAW

21 1. Applicants, JUC, H₂O, Diversified and Queen Creek are public service corporations
22 within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-252, 40-281 and 40-
23 282.

24 2. The Commission has jurisdiction over JUC, H₂O, Diversified and Queen Creek and of
25 the subject matter of the applications as amended.

26 3. Notice of the applications as amended and described herein was given in the manner
27 prescribed by law.

28 4. The public convenience and necessity require the public would benefit by the

EXHIBIT E

RESOLUTION NO. 033104-DWL

A RESOLUTION OF THE BOARD OF SUPERVISORS OF PINAL COUNTY, ARIZONA SETTLING CERTAIN LITIGATION PENDING IN MARICOPA COUNTY SUPERIOR COURT ENTITLED *DIVERSIFIED WATER UTILITIES, INC. v. PINAL COUNTY et al.*; DECLARING VOID *AB INITIO* RESOLUTION NO. 031401-SDWID, THE SKYLINE DOMESTIC WATER IMPROVEMENT DISTRICT AND ALL ACTIONS TAKEN IN FURTHERANCE THEREOF; VOIDING AND/OR TERMINATING THAT CERTAIN AGREEMENT BETWEEN THE SKYLINE DOMESTIC WATER IMPROVEMENT DISTRICT AND SHEA UTILITY SERVICES COMPANY, INC. ("SHEA SERVICES") AND JOHNSON UTILITIES L.L.C., AN ARIZONA PUBLIC SERVICE COMPANY ("JOHNSON UTILITIES"), DATED JULY 11, 2001; DISMISSING THE PETITIONS TO FORM THE SKYLINE DOMESTIC WATER IMPROVEMENT DISTRICT; ADOPTING A POLICY GOVERNING CERTAIN PETITIONS TO FORM DOMESTIC WATER IMPROVEMENT DISTRICTS; FINDING DIVERSIFIED WATER UTILITIES, INC. TO BE A FIT AND PROPER WATER PROVIDER AND SUPPORTING DIVERSIFIED WATER UTILITIES, INC. IN ITS EFFORTS TO HAVE THE ARIZONA CORPORATION COMMISSION EXPAND ITS CERTIFICATED AREA IN PINAL COUNTY, ARIZONA.

WHEREAS, prior to February 28, 2001 petitions were submitted to the Board of Supervisors requesting the formation of the Skyline Domestic Water Improvement District pursuant to Arizona Revised Statutes Sections 48-901 *et seq.*;

WHEREAS, after notice a public hearing was conducted on the petitions and the matter was taken under advisement;

WHEREAS, on or about March 8, 2001 the Board of Supervisors were notified that petitions were being withdrawn and the withdrawal was accepted on March 9, 2001;

WHEREAS, between March 12 and March 13, 2001 new petitions were submitted requesting the Board of Supervisors form the Skyline Domestic Water Improvement District ("Skyline");

WHEREAS, on March 14, 2001 the Board of Supervisors summarily adopted Resolution No. 031401-SDWID purportedly creating Skyline, with the Board of Supervisors to act as the Board of Directors of Skyline;

WHEREAS, Diversified Water Utilities, Inc. ("Diversified"), a public service corporation certificated by the Arizona Corporation Commission ("ACC") to serve much of the territory encompassed by Skyline, filed an action challenging the creation of Skyline which action is pending in Maricopa Superior Court as Cause No. CV2002-003724 (consolidated with Case No. CV2003-006223) and entitled *Diversified Water Utilities, Inc. v. Pinal County, et al.*;

WHEREAS, Pinal County, the Board of Supervisors, Skyline and the individual members of the Board of Supervisors and the Board of Skyline are desirous of resolving and settling the aforementioned litigation and establishing a policy setting forth certain criteria that must be met to demonstrate that the public convenience, necessity or welfare will be promoted by the establishment or extension of a domestic water improvement district where a water provider authorized by law to serve the public already exists in the vicinity of the area sought to be included in a domestic water improvement district;

WHEREAS, the Board of Supervisors has authority, *inter alia*, to prosecute, defend and compromise actions to which the County is a party, pursuant to A.R.S. §11-251(14); to make and enforce necessary rules and regulations for the government of its body, the preservation of order and the transaction of businesses, pursuant to A.R.S. §11-251(21); to do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government, pursuant to A.R.S. §11-251(30); to make and enforce all local, police, sanitary and other regulations not in conflict with the general law, pursuant to A.R.S. §11-251(31); and, in the conduct of county business, to adopt, amend and repeal all ordinances necessary or proper to carry out the duties, responsibilities and functions of the county which are not otherwise specifically limited by section 11-251 or any other law or in conflict with any rule or law of this state, pursuant to A.R.S. §11-251.05;

NOW WHEREFORE, the Board of Supervisors, in furtherance of such settlement, based upon the entire record developed before the Board of Supervisors and in the litigation:

FINDS, CONCLUDES AND RESOLVES that in the action entitled *Diversified Water Utilities, Inc. v. Pinal County, et al.*, Maricopa County Cause No. CV2002-003724, Judge Kenneth Fields made a determination that the requirements of A.R.S. § 48-906(A) and -902(G) were not or may not have been met at the time Resolution No. 031401-SDWID was adopted on March 14, 2001 purporting to create the Skyline Domestic Water Improvement District;

FURTHER FINDS, CONCLUDES AND RESOLVES that, at the time Resolution No. 03401-SDWID was adopted on March 14, 2001, the proposed Skyline Domestic Water Improvement District was composed of discontinuous areas located within six miles of the boundaries of the City of Mesa and the Town of Queen Creek and that neither municipality had consented to the formation of the Skyline Domestic Water Improvement District;

FURTHER FINDS, CONCLUDES AND RESOLVES that Resolution No. 031401-SDWID, Skyline and all actions taken on behalf of or in furtherance of Skyline, including, without limitation, any agreements entered into with Skyline or the Board on behalf of Skyline, were and are void *ab initio* and of no force or effect and that Resolution No. 031401-SDWID is repealed;

FURTHER FINDS, CONCLUDES AND RESOLVES, in the exercise of its discretion pursuant to A.R.S. §48-906(B), that the territory set forth in the petitions relating to the request to form the Skyline Domestic Water Improvement District that led to the adoption of Resolution No 031401-SDWID should not have been incorporated into an improvement district and all further proceedings on the petitions are hereby dismissed;

FURTHER FINDS, CONCLUDES AND RESOLVES that at this time:

1. The public convenience, necessity or welfare is not promoted by duplication of water providers and water systems in the area described in Exhibit A (attached hereto and incorporated by reference), plus any natural fill area east of the railroad tracks and the area described in Exhibit A;
2. Diversified holds a certificate of convenience and necessity issued by the Arizona Corporation Commission (ACC) to provide domestic water service to much of the area described in Exhibit A;
3. Over the past four years through participation in proceedings before the Arizona Corporation Commission, public hearings before this Board and Maricopa Superior Court Case Nos. CV2002-003724 and CV2003-006223, the County Defendants have become familiar with Diversified, its operations and recognize Diversified's ability to provide reliable water service to its customers and that Diversified is ready, willing and able to provide reliable domestic water service to the area described in Exhibit A, plus any natural fill area east of the railroad tracks and the area described in Exhibit A, in accordance with the rules, regulations and laws that govern its operations;
4. Pinal County and the Board of Supervisors therefore, support the reconsideration and amendment of Arizona Corporation Commission Decision No. 65840 (Docket Nos. W-02234A-00-0371, WS-02987A-99-0583, WS-02987A-00-0618, W-02859A-0774 and W-0395A-00-0784, as amended and supplemented) or such other application Diversified may file during calendar year 2004 so that Diversified's Certificate of Convenience and Necessity is expanded to include the territory described in Exhibit B (attached hereto and incorporated by reference) (i.e., most of the area ACC's Staff and ACC Hearing Division recommended be granted to Diversified, but limited to the area generally falling east of the railroad tracks and west of the CAP canal) and furthers recommends and requests that Pinal County Staff file letters and testimony in support thereof and withdraw the testimony previously submitted in that docket on behalf of Pinal County Board of

Supervisors in support of Johnson Utilities, L.L.C.'s request to obtain a certificate of convenience and necessity to provide domestic water service to the area, as may be reasonably requested by Diversified;

FURTHER FINDS, CONCLUDES AND RESOLVES, in furtherance of exercising its authority to determine whether the public convenience, necessity or welfare will be served by the formation of a domestic water improvement district pursuant to A.R.S. §48-905 and 48-906, petitioners seeking to form or extend a domestic water improvement district over or into any area where an existing entity is authorized by law to provide domestic water service to the public within five (5) miles of the territory to be included within the domestic water improvement district, shall, no less than ten (10) days prior to the hearing required by A.R.S. §48-905(A) or, if hearing is waived pursuant to A.R.S. §48-905(C), no less than ten (10) days prior to action by the Board, to secure and submit to the Board of Supervisors and existing water providers authorized to provide service within five (5) miles of the proposed domestic water improvement district or extension all of the following:

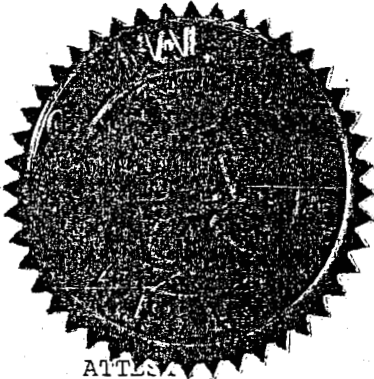
1. A non-binding determination as to whether the public convenience, necessity or welfare will be promoted by the formation or extension of the domestic water improvement district, prepared by an independent third party or entity (i) experienced in evaluating the water needs of similar areas, (ii) not affiliated with or having performed services within the past five years for the petitioners or any water provider rendering water service within ten (10) miles of the area where the domestic water improvement district is sought to be formed or extended and (iii) if the petition involves any portion of the area described in Exhibit A, acceptable to Diversified, provided Diversified, if requested by the petitioners or Pinal County, provides not less than four names of persons or entities that it deems acceptable to perform the determination. The party performing the determination shall be asked to evaluate, without limitation, the following: whether and to the extent existing water service providers are unwilling or unable to render adequate water service to the area sought to be served by the domestic water improvement district; whether and to the extent the domestic water improvement district's facilities will duplicate existing facilities, whether and to the extent an existing water provider or the public it serves in Pinal County will be adversely affected if the District is created or extended.
2. An elementary business plan, such as or similar to the Elementary Business Plan defined in Arizona Administrative Code R18-4-602, including evidence of the domestic water improvement district's ability and plan to timely pay compensation to the existing certificated provider; and
3. Assurance that no later than one year from formation or extension of the domestic water improvement district that a determination will be secured from the Arizona Department of Environmental Quality (ADEQ) as to whether the domestic water improvement district meets the technical, managerial and

financial capacity requirements specified in Arizona Administrative Code R18-4-603, R18-4-604 and R18-4-605, as amended from time to time.

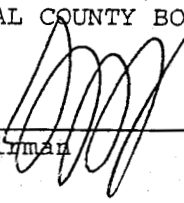
FURTHER FINDS, CONCLUDES AND RESOLVES that it is in the public interest and in furtherance of the settlement of the action and Notice of Claim filed by Diversified for the County to enter into a Settlement Agreement with Diversified in the form attached hereto as Exhibit C and a Tolling Agreement with Diversified in the form attached hereto as Exhibit D and authorizing execution of the Settlement Agreement and the Tolling Agreement.

FURTHER FINDS, CONCLUDES AND RESOLVES that this Resolution shall be effective immediately.

PASSED, APPROVED AND ADOPTED this 31st day of March, 2004, by the affirmative vote of a majority of a quorum of the Board of Supervisors.



PINAL COUNTY BOARD OF SUPERVISORS


Chairman

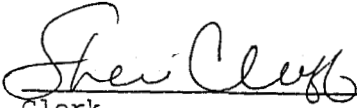

Clerk

EXHIBIT F

2000 DEC -1 P 2:44

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

DOCKET NOS. W-02234-A-00-0775
WS-02987A-00-0775
W-02859A-00-0775

ORDER

This matter having been presented to the Arizona Corporation Commission on Diversified Water Utilities, Inc.'s Application for an Order Without Notice To Preserve Status Quo, and the Arizona Corporation Commission having considered the allegations of the Application and the First Amended Complaint and Diversified Water Utilities, Inc.'s attorney having certified the efforts which have been made to give notice and the reasons supporting Diversified Water Utilities, Inc.'s claim that notice should not be required, and it appearing that immediate and irreparable injury, loss, and damage will result to Diversified Water Utilities, Inc., to wit the alienation of property owners within Diversified Water Utilities, Inc.'s certificated area, the loss of a well and wellsite, infringement upon Diversified Water Utilities, Inc.'s certificated area by another public service corporation and the risk of financing that is critical to Diversified Water Utilities, Inc. all of which are uncompensable after the fact, before notice is given to Johnson Utilities L.L.C. dba Johnson Utilities Company or Johnson Utilities L.L.C. dba Johnson Utilities Company's attorney and a hearing can be held on Diversified Water Utilities, Inc.'s Motion for Temporary Restraining Order and before Johnson Utilities L.L.C. dba Johnson Utilities Company's attorney.

1 Utilities Company or Johnson Utilities L.L.C. dba Johnson Utilities Company's attorney can be
2 heard in opposition, and good cause appearing therefore;

3 IT IS THEREFORE ORDERED that Johnson Utilities L.L.C. dba Johnson
4 Utilities Company, its officers, directors, employees, agents, servants and any and all other
5 persons in active concert or participation with them be and hereby are immediately restrained,
6 from:

7 1. Interfering with Diversified Water Utilities, Inc.'s application for
8 financing with the Water Infrastructure Financing Authority ("WIFA");

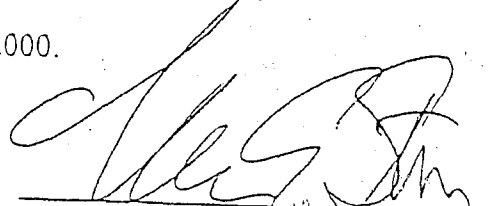
9 2. Extending its facilities or service into the area encompassed by
10 Diversified Water Utilities, Inc.'s Certificate of Convenience and Necessity including, without
11 limitation (i) entering into a Well Purchase Agreement relating to a wellsite more fully described
12 on Exhibit A, attached hereto and (ii) entering into a Service Agreement to provide, or otherwise
13 providing water from the aforementioned wellsite to provide water service to properties within
14 Diversified Water Utilities, Inc.'s Certificate of Convenience and Necessity;

15 3. Contacting, speaking to, discussing and/or negotiating with
16 landowners and/or prospective developers within Diversified Water Utilities, Inc.'s certificated
17 area for the purpose of offering water service and/or encouraging said landowners or prospective
18 landowners from seeking deletions from Diversified Water Utilities, Inc.'s certificated area, or
19 otherwise filing complaints regarding Diversified Water Utilities, Inc.'s service.
20

21 IT IS FURTHER ORDERED that, unless further extended by Order of the
22 Commission this Order shall remain in force and effect pending a hearing whereby Johnson
23 Utilities, L.L.C., dba Johnson Utilities Company shall appear and show cause why the Order
24 Preserving the Status Quo should not remain in effect pending a final determination of
25 Diversified Water Utilities, Inc.'s First Amended Complaint.
26

1
2 IT IS FURTHER ORDERED that Johnson Utilities, L.L.C., dba Johnson Utilities
3 Company shall appear and show cause why the Order Preserving the Status Quo should not
4 remain in effect pending a final determination of Diversified Water Utilities, Inc.'s First
5 Amended Complaint^{on} the 6th day of December at 11:00 a.m. 2000 at the offices of the
6 Arizona Corporation Commission at 1200 West Washington, Phoenix, Arizona.

7 Dated this 1st day of December, 2000.

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9 
10 ADMINISTRATIVE LAW JUDGE
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